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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LOUIS LONG, individually;
Plaintiff,

v.

SMITH'S FOOD & DRUG CENTERS, INC., a
Foreign Corporation; DOES I through X; and
ROE CORPORATIONS I through X,
inclusive,
Defendants.

Case No.: 2:24-cv01711-MDC

**STIPULATION AND ORDER TO
EXTEND DISCOVERY DEADLINES
ONLY AS TO THE DEPOSITIONS OF
DAWN BIRKLA AND DEFENDANT
SMITH'S FRCP 30(b)(6) WITNESS(ES)**

[SECOND REQUEST]

Plaintiff LOUIS LONG (hereinafter, "Plaintiff"), by and through his counsel of record, Brian P. Clark and Lukas B. McCourt of the law firm of Clark McCourt, and Defendant SMITH'S FOOD & DRUG CENTERS, INC. (hereinafter, "Defendant")(the parties hereinafter will be collectively referred to as "Parties"), by and through its counsel of record, Jerry S. Busby and Pooja Kumar of the law firm of Cooper Levinson, hereby submit this Stipulation and Order to Extend Discovery Deadlines [Second Request] Only As To The Depositions of Dawn Birkla and Defendant Smith's FRCP 30(b)(6) Witness(es).

Local Rule 26-3 states that stipulations to extend discovery must be supported by good cause for the extension. To establish good cause, the Court looks to the diligence of the party that seeks the extension. (*See Safeco Ins. Co. of Am. V. Air Vent, Inc.*, Case No. 2:20-cv-1579, 2021 U.S. Dist. LEXIS 95692, at *1 (D. Nev. May 19, 2021) (*citing Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294-95 (9th Cir. 2000)). Good cause is present if the deadline at issue "cannot

1 reasonably be met despite the diligence of the party seeking the extension.” (*Johnson v. Mammoth*
 2 *Recreations, Inc.* 975 F.2d 604, 608-9 (9th Cir. 1992). As such, the instant Stipulation follows.

3 Pursuant to the Stipulation and Order To Extend Discovery Deadlines [First Request], the
 4 discovery cut-off in this case is May 12, 2025. (ECF No. 19, January 10, 2025). The parties have
 5 conducted or will have finished conducting written discovery in this case by the discovery cut-off
 6 date. Plaintiff has noticed depositions of Dawn Birkla, an employee of Defendant Smith’s, and
 7 Defendant Smith’s FRCP 30(b)(6) Witness(es) for May 8, 2025 and May 9, 2025, respectively.
 8 However, the parties are unable to conduct the two (2) noticed depositions due to the counsels’ trial
 9 schedules and calendar conflicts. As a result, the parties request additional time for discovery only
 10 to conduct the two (2) noticed depositions to accommodate the counsels’ trial schedules and
 11 calendaring conflicts.

12 **IT IS HEREBY STIPULATED AND AGREED**, by and between the Parties, through
 13 their respective counsel of record, that discovery deadlines only as to the two (2) noticed
 14 depositions identified herein be extended thirty-two days (32) days to June 13, 2025, as set forth
 15 below, to allow the Parties to complete the depositions.

16 **I. STATEMENT SPECIFYING DISCOVERY THAT HAS BEEN COMPLETED**

17 To date, the Parties have completed the following discovery:

- 18 • The Parties participated in the FRCP 26(f) conference.
- 19 • The Parties served their FRCP 26(a)(1) initial disclosures and supplements thereto.
- 20 • Both Parties have propounded written discovery requests.
- 21 • Both Parties have responded to written discovery requests.
- 22 • The Parties have been collecting Plaintiff’s relevant medical records.
- 23 • Defendant has requested additional medical authorizations from Plaintiff to obtain
 24 additional medical records.
- 25 • The Parties are presently meeting and conferring in good faith regarding served
 26 discovery responses.
- 27 • Defendant has conducted the deposition of Plaintiff.
- 28

• Plaintiff has noticed the depositions of two (2) witnesses – Dawn Birkla, a percipient employee witness, and Defendant’s FRCP 30(b)(6) Witness(es).

• The Parties are presently meeting and conferring in good faith regarding reasonable discovery remaining to be completed and a reasonable timeline for the completion of same.

II. SPECIFIC DESCRIPTION OF DISCOVERY THAT REMAINS TO BE COMPLETED

• Plaintiff intends to conduct the depositions of Dawn Birkla, a percipient employee witness, and Defendant’s FRCP 30(b)(6) Witness(es)

III. REASONS WHY DISCOVERY REMAINING WAS NOT COMPLETED WITHIN DEADLINES CONTAINED IN DISCOVERY PLAN AND SCHEDULING ORDER

Since the commencement of discovery, the Parties have been working amicably together to gather relevant documents, issue necessary discovery, engage in expert discovery, and depose necessary parties and witnesses. Although the Parties had scheduled the depositions of Ms. Birkla and Defendant’s FRCP 30(b)(6) Witness(es), the Parties have been unable to conduct the deposition dates of the witnesses due to the counsels’ trial schedules and calendar conflicts. The Parties believe that the two (2) depositions will be concluded within the time requested in this Stipulation. This extension is sought in good faith and is not meant to unnecessarily delay proceedings in this matter.

IV. PROPOSED SCHEDULE FOR COMPLETING ALL REMAINING DISCOVERY

As a result of the above, it is requested that the discovery deadlines in this case be continued from their present deadlines, as follows:

1. **Discovery Cut-Off Date as to the two (2) depositions identified herein:** The Parties jointly propose that the discovery cut-off date for the two (2) depositions identified herein be extended thirty-two (32) days from its present deadline of May 12, 2025, to **June 13, 2025**. The Parties acknowledge that the discovery cut-off date for all other discovery will remain May 12, 2025.

2. **Amending the Pleading and Adding Parties:** The Parties acknowledge that the

1 deadline to amend the pleadings and add additional parties has passed. As such, the Parties do not
2 seek to extend this deadline.

3 3. **Fed. R. Civ. P. 26(a)(2) Disclosure of Experts:** The Parties acknowledge that the
4 deadline to disclose experts has passed. As such, the Parties do not seek to extend this deadline.

5 4. **Dispositive Motions:** The Parties jointly propose that the date for filing dispositive
6 motions be extended twenty-three (23) days from its present June 10, 2025, to **July 3, 2025**.

7 5. **Pre-Trial Order:** The Parties jointly propose that the date for filing the joint pre-
8 trial order, which is currently set for July 11, 2025, be extended for twenty-four (24) days to **August**
9 **4, 2025**. In the event that dispositive motions are filed, the Parties jointly propose that the date for
10 filing the joint pre-trial order be extended until thirty (30) days after decision on dispositive motions
11 or until further Order of this Court.

12 6. **Fed. R. Civ. P. 26(a)(3) Disclosure:** The disclosure required by FRCP 26(a)(3), and
13 any objections thereto, shall be included in the joint pre-trial order.

14 7. **Alternative Dispute Resolution:** Counsel for the Parties certify that they met and
15 conferred about the possibility of using alternative dispute resolution, including mediation,
16 arbitration, and/or early neutral evaluation. The Parties have not scheduled any such resolution
17 forum at this point, but they have begun discussions and agree to reconsider following additional or
18 completion of discovery.

19 8. **Alternative Forms of Case Disposition:** The Parties certify that they discussed
20 consenting to a trial by a magistrate judge or engaging in the Short Trial Program under FRCP 73
21 and, at present, do not consent to either alternative form of case disposition.

22 9. **Electronic Evidence:** The Parties certify that they have discussed and intend to use
23 electronic evidence at the trial of this matter and will ensure that said evidence is in electronic
24 format compatible with the Court's electronic jury evidence display system. At present, the Parties
25 have not agreed upon any stipulations regarding the use of electronic evidence but will address this
26 issue again in the joint pre-trial order.

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1 10. **Extensions or Modifications of the Discovery Plan and Scheduling Order:** As
2 the Parties submit the instant Stipulation within twenty-one (21) days of the subject deadline, the
3 Parties believe that the instant Stipulation is supported by a showing of good cause in compliance
4 with LR 26-3.

5 **IT IS SO STIPULATED.**

6 DATED this 12th day of May, 2025.

DATED this 12th day of May, 2025

7 CLARK MCCOURT

COOPER LEVINSON

9 /s/ Lukas B. McCourt
10 Brian P. Clark
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Smith's Food & Drug Centers, Inc.

16 **ORDER**

17 **IT IS SO ORDERED:**

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21 Hon. Maximiliano D. Couvillier III
22 United States Magistrate Judge

23 DATE: 5/13/2025
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